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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,848	03/15/2001	Srinivas Gutta	US010042	5264

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EXAMINER

KIM, PAUL L

ART UNIT PAPER NUMBER

2857

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/808,848

Applicant(s)

GUTTA ET AL

Examiner

Paul L Kim

Art Unit

2857

PLK

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, 8, 9, 13, 14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Osterweil.

With regard to claims 1, 2, 8, and 9, Osterweil teaches a device for monitoring a person requiring supervision comprising: a controller programmed to receive a video signal from an environmental monitor in a monitored zone (fig. 1, part 10), the controller being programmed to classify an alarm condition attributed to the person to produce class data (col. 2, lines 35-48), and generating an alarm signal (col. 2, lines 49-53) including a portion of the monitor signal prior to or after an incidence of the alarm condition (col. 2, lines 49-57).

With regard to claim 5, Osterweil teaches the controller being programmed to solicit an action by an occupant (col. 11, lines 52+).

With regard to claim 6, Osterweil teaches the controller programmed to recognize a speaker's voice (col. 4, lines 40-43).

With regard to claims 13 and 14, Osterweil teaches a method of monitoring a person requiring supervision comprising the steps of: generating a video signal indicative of a status of a person (fig. 2, parts 35 & 37), detecting an event requiring the attention of a remote supervisor (col. 2, lines 35-48), and transmitting at least a portion of the first signal to the remote supervisor as a result of the detecting (col. 2, lines 53-57), and detecting behavior other than the person in the person's environment (col. 9, lines 60+ and col. 14, lines 51-56).

With regard to claim 16, Osterweil teaches detecting a video signal and classifying a predefined pattern in the video signal (col. 9, lines 20-30).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osterweil in view of Son.

With regard to claims 3 and 18, Osterweil does not teach an alarm condition being responsive to the recognition of a face. Osterweil teaches images of a person being taken and compared to a threshold. Son teaches a vehicle security system in which facial images of a person are taken and compared with a stored image pattern (col. 4, lines 52-57). Since the recognition of faces relies on "image signatures", in which

the invention of Osterweil teaches (fig. 2, part 26), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Osterweil, so that the monitoring system recognizes faces, as taught by Son, so as to derive the benefit of a versatile system that can be used on a variety of different people.

With regard to claim 4, Osterweil teaches the controller being programmed to solicit an action by an occupant (col. 11, lines 52+).

5. Claims 7, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osterweil et al in view of Corn.

With regard to claims 7 and 15, Osterweil teaches detecting an alarm condition by observing the activity of a person, but does not teach the activity being a lapse in breathing. Corn teaches patient monitoring system that detects a lapse of breathing (col. 1, lines 19-25 & col. 2, lines 39-42). Since Corn and Osterweil are both within the art of visually monitoring a patient in an environment, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Osterweil, so that the patient monitoring system detects a lapse of breathing, as taught by Corn, in order to be able to detect a wide variety of disorders with a patient.

With regard to claim 19, Osterweil teaches detecting movement of a person being monitored, but does not specify detecting *lack* of movement. Corn teaches a patient monitoring system that detects lack of movement of the subject by monitoring motion of the patient (col. 13, lines 17-19). Since the invention of Osterweil includes a method of recording and comparing patient images with a reference image and since

this system can be easily adapted to detect lack of patient movement, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Osterweil, so that lack of movement is detected, as taught by Corn, so as to derive the benefit of a flexible monitoring system that can monitor a wide variety of disorders to save costs.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen in view of Oka et al.

With regard to claims 10 and 11, Jacobsen et al teaches a monitoring system comprising: a controller receiving a sensor signal (fig. 2), *at least* one sensor that generates a first and second signal responsive to a first state of a patient (fig. 1, part 22) and a second state of another patient (fig. 1, part 14), and the controller generating a first and second alarm signal when they are outside a specific range (col. 5, lines 7-14).

Jacobsen et al, however, does not specify one of the two people monitored being a *caretaker* of a person. Oka et al teaches a medical communications system in which a caretaker as well as a patient is being monitored (fig. 1, parts 18 and 48). Since Jacobsen et al and Oka et al are both within the art of monitoring people, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Jacobsen et al, so that one of the two people being monitored is a caretaker, as taught by Oka et al, so as to derive the benefit of improved system flexibility.

With regard to claim 12, Jacobsen et al teaches the controller being programmed to generate a message to a patient when the first state is outside the first range (abstract).

Response to Arguments

7. Applicant's arguments with respect to claims 1-9 and 13-19 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with regards to claims 10-12, filed December 15, 2003, have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument, of claim 10, that the prior art does not teach a caretaker being monitored, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference

as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., monitoring the health or safety of the caretaker) are not recited in claims 10-12. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Higgins et al and Jorgenson et al both teach a remote health monitoring system for a patient.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 703-305-7468. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK
January 12, 2004


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800